

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
)	ICC Docket No. 13-0495
Approval of the Energy Efficiency and)	
Demand Response Plan Pursuant to)	
Section 8-103(f) of the Public Utilities Act)	

REPLY BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to the schedule established by the Administrative Law Judge (“ALJ”), hereby file their Reply Brief in the above-captioned proceeding. The People’s Reply Brief addresses arguments presented in Initial Briefs filed by, among others, Commonwealth Edison Company (“ComEd” or “the Company”), the Commission Staff (“Staff”), REACT, the Environmental Law and Policy Center (“ELPC”), and the Illinois Industrial Energy Consumers (“IIEC”).

I. INTRODUCTION

ComEd spends a significant amount of its Brief arguing that Staff and Intervenor proposals for further program development and consensus-building through the Stakeholder Advisory Group (“SAG”) process amount to unlawful attempt to transform SAG into a “decision-making body” that contradicts its original intended purpose, thereby usurping Commission decision-making authority inherent in the Public Utilities Act (“the Act”). ComEd IB at 11-12. Specifically, it suggests that Staff and Intervenor proposals for both energy

efficiency program modification discussions as well as creating consensus through a Net-to-Gross (“NTG”) framework occurring after the close of this docket “only further underscores the extent to which Staff and intervenors have strayed from Section 8-103, Commission orders and the SAG’s purpose.” *Id.* at 12.

In short, this is utter nonsense. First, ComEd itself proposes a Commercial & Industrial (“C&I”) Pilot in its Brief that it expects “that the additional details of the Pilot would be developed after the Commission approves the Pilot during the final program design phase.” ComEd IB at 57. It adds that “ComEd would work with interested stakeholders during the final program design phase to button down details such as the delivery strategy, market strategy and program targets.” *Id.* The OAG and other intervenors made clear in their Initial Briefs that these important “details” should be developed in the SAG, so that *all* stakeholders can provide input on the proposal. The facts are that experts and attorneys from the OAG, NRDC, ELPC, Staff and others have spent considerable hours since the inception of Section 8-103 efficiency programs providing input to electric utility efficiency program providers. ComEd itself admits that its program planning and delivery process has benefitted from SAG involvement, noting that “the SAG has played an important advisory role in the development of the Plan and its portfolio of programs.” ComEd IB at 9.

Contrary to ComEd’s accusation, no party in this docket, including the People and Staff, are suggesting that the Commission’s authority to oversee energy efficiency programs should be usurped by the SAG. The proposals regarding establishing a clear NTG framework, as described at pages 40-51 of the AG Initial Brief, simply mimics the annual consensus updating of the Technical Resource Manual (“TRM”) process that has already been embraced and approved by the Commission in its orders in Docket No. 12-0528, 13-0077 and 13-0437. The NTG

framework advocated by the People similarly envisions a collaborative, fact-based, independent evaluator-assisted consensus building process that already exists. Likewise, the OAG's and other Intervenor's suggestions that vague program or deficient ComEd program proposals be fine-tuned through the SAG meetings merely reference a continuation of that which has already occurred in SAG monthly meetings over the past 5-1/2 years: a collaborative approach to building truly cost-effective programs. That is precisely the role the Commission said the SAG was designed to serve:

All parties involved, with the possible exception of Staff, maintain that a Stakeholder Advisory Committee is essential to the success of the Plan. This Commission agrees with ComEd that it should establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals and to continue strengthening the portfolio. The Stakeholder group's responsibilities include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

Order of February 6, 2008 at 32. Clearly, the Commission sought an expansive, participatory framework for the SAG, with its use of the language "but are not limited to..." *Id.* Subsequent Commission orders, particularly highlighted by continued expansion of the SAG's role in assisting utilities in the delivery *and evaluation of* cost-effective efficiency programs in ICC Docket No. 10-0570 and the ICC's approval of the SAG-created TRM in Docket Nos. 12-0528, 13-007 and 13-0437, demonstrate Commission interest in promoting collaboration and communication between the utility and DCEO programs administrators. *See, e.g.,* AG Ex. 1.0 at 43-45. ComEd's characterization of Intervenor and Staff proposals referencing SAG involvement as attempts to fundamentally transform the SAG process should be dismissed for the deceptive rhetoric that it is.

Additionally, ComEd's request that the Commission not only approve reduced energy savings goals for the three-year Plan as a result of the budget cap provisions in Section 8-103(d), but *further reduce ComEd's own forecasted goals* by adopting reduced realization rates designed to eliminate any performance risk for measure factors "outside of ComEd's control", should be rejected. The fact is, ComEd was unable to identify what such factors would be, except to point to measures that have yet to be included within the TRM, and noting that the proposed realization rate reduction framework would be a "back-stop for these measures." ComEd Ex. 3.0 at 75. ComEd's quest to eliminate all performance risk from its Plan, at the expense of achieving maximum energy savings, should be rejected.

These and other responses to the Company's and other parties' briefs are discussed in detail below.

II. PROGRAMS, GOALS AND BUDGETS:

A. ComEd's Proposed Programs and Savings Goals

1. The Commission Should Order ComEd to Transfer the CFL Lighting Program to the IPA Portfolio in Program Years 8 and 9

The AG Initial Brief highlighted the fact that notwithstanding the spending cap, ComEd could derive greater energy savings by transferring the residential CFL program, like the Behavioral program, to the IPA portfolio in years 8 and 9. AG IB at 10-13, 17-20. As noted therein, administration of the program could and should remain exactly as it would under the existing Section 8-103 framework, due to the fact that ComEd would still oversee the CFL program. In addition, the overall split of efficiency investments per customer class would remain, given the fact that the IPA programs expenses are recovered through the same Section 8-103 rider. In fact, the variety and depth of residential programs could be increased in years 8 and

9, given the amount of dollars that would be released for the Section 8-103 residential offerings assuming the CFL program transfer. AG Ex. 1.0 at 9.

In response to these points, ComEd argues that the Public Utilities Act (“the Act”) precludes consideration of the OAG proposal, because Section 16-111.5B governs the procurement process, Section 8-103 “limits this docket to review and approval of ComEd’s efficiency plan”, and neither section “includes a provision authorizing transfer of a particular program to the IPA as part of the consideration of an electric utility’s energy efficiency plan pursuant to Section 8-103.” ComEd IB at 20. ComEd then reaches to assert that these two statutory sections “mandate rejection of the AG’s proposal.” *Id.* at 21.

This argument, however, invokes no particular rule of statutory construction, and imagines prohibitions where none exist. First and foremost, the OAG’s recommendation that ComEd be directed to remove its CFL program from years 8 and 9 of its Plan is certainly within the Commission’s right to order in this docket. The fact is, Mr. Mosenthal clearly demonstrated that doing so would still enable the program to be provided, albeit under Section 16-111.5B, while freeing up enough energy savings to increase total energy savings over the three-year portfolio by 2.2 megawatt hours (“MWh”), or a 22% increase from ComEd’s proposed three-year goals. AG Ex. 1.0 at 15. Directing ComEd *not* to offer a particular program under Section 8-103 certainly is within the Commission’s authority in this docket.

Second, the General Assembly inextricably linked Section 8-103 programs and efficiency programs offered under Section 16-111.5B. Section 16-111.5B includes no fewer than eight references to Section 8-103 of the Act:

- (a) Beginning in 2012, procurement plans prepared pursuant to Section 16-111.5 of this Act shall be subject to the following additional requirements:

- (1) The analysis included pursuant to paragraph (2) of subsection (b) of Section 16-111.5 shall also include the impact of energy efficiency building codes or appliance standards, both current and projected.
- (2) ***The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.***
- (3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include the following:
 - (A) A comprehensive energy efficiency potential study for the utility's service territory that was completed within the past 3 years.
 - (B) ***Beginning in 2014, the most recent analysis submitted pursuant to Section 8-103A of this Act and approved by the Commission under subsection (f) of Section 8-103 of this Act.***
 - (C) ***Identification of new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act*** and that would be offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility.
 - (D) ***Analysis showing that the new or expanded cost-effective energy efficiency programs*** or measures would lead to a reduction in the overall cost of electric service.
 - (E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.
 - (F) An energy savings goal, expressed in megawatt-hours, for the year in which the measures will be implemented.
 - (G) For each ***expanded*** or new program, the estimated amount that the program may reduce the agency's need to procure supply. In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all

bids received. ***The utility shall develop requests for proposals consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.***

- (4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).
- (5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, ***the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.***

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

- (6) ***An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission*** in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the costs for any evaluation, measurement, and verification of the measures, from all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy ***from the utility through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act***, provided, however, that the limitations described in subsection (d) of that Section shall not apply to the costs incurred pursuant to this Section or Section 16-111.7 of this Act.
- (b) ***For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.***

220 5/16-111.5B (emphasis added). As can be seen from the words of this energy efficiency procurement provision, the General Assembly clearly linked the programs to be provided under both sections of the Act in its reference to “expansions” of Section 8-103 programs, utilization of the Section 8-103 cost recovery rider, and satisfying identical definitions of cost-effectiveness for purposes of program approval. The notion that the Commission must somehow examine Section 8-103 programs in isolation of the IPA efficiency procurement provisions, accordingly, ignores the clear linkage of the programs referenced by the General Assembly.

Ironically, ComEd itself highlights the inextricable link to Section 16-111.5B programs that the Company itself as it planned, designed and developed its portfolio of Section 8-103 programs in this docket. For example, ComEd notes that while the General Assembly has not modified the spending cap provisions of either Section 8-103 or 8-104, it *did* enact Section 16-111.5B¹ of the Act a few months after the Commission filed its statutorily required report on the effect of the spending cap on the delivery of energy efficiency programs, which requires the provision of additional, Section 8-103 program expansions and other new programs to be delivered through the Illinois Power Agency’s procurement process. ComEd IB at 15. ComEd acknowledges, too, that CFL lighting programs constitute the “simpler, less costly measures that generate substantial kWh savings.” *Id.* at 14. ComEd further notes that it transferred the

¹ Section 16-111.5B of the Act provides:

(2) The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.

(3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. 220 ILCS 5/16-111.5B(a)(2)(3).

residential Behavioral program, known as the Home Energy Report program – another program it described as procuring “the cheapest energy efficiency in Plan Year 5” – to the IPA portfolio. *Id.* at 15. Clearly, the Company linked cheap, highly cost-effective programs to easy provision under the IPA portfolio, as evidenced not only by its decision to transfer the Behavioral program to the IPA portfolio.

ComEd’s Brief also acknowledges how the statutory spending cap in Section 8-103(d) has served to reduce approved savings goals from the annual savings goals listed in Section 8-103(b) of the Act, both in this Plan proposal, and in ComEd’s Plan 2, covering program years (“PY”) 4 through 6. ComEd IB at 14. Given the spending screen, the Company is obliged to construct a portfolio that, to the extent practicable, achieves the maximum energy savings goal possible, in light of its inability to hit the actual statutory savings target. The OAG proposal that requests that the Commission direct ComEd to reconfigure its portfolio in years 8 and 9 to achieve more energy savings is completely consistent with that statutory goal of maximizing energy savings. As such, ComEd’s argument that doing so is somehow precluded under both Section 9-103 and 16-111.5B of the Act has no basis in fact or law.

ComEd further argues that moving the program to the IPA would diminish the amount of energy efficiency being offered to the residential sector under Plan 3, and would conflict with the requirement under Section 8-103 that program offerings reflect a diverse portfolio across all customer classes. ComEd IB at 21. But this argument, too, misses the mark. To be clear, the OAG is not recommending that statutory provisions in Section 16-111.5B regarding bidding and IPA approval processes be avoided or ignored. Neither is the AG suggesting that residential customers pay money into Section 8-103 programs but not obtain their fair share of the programs

offered commensurate with that revenue collection. That position would be absurd in light of the AG's statutory representation of residential customers in all proceedings before the Commission.

The point is to highlight a glaring inefficiency in ComEd's selection of programs as presented to both the IPA under Section 16-111.5B and the ICC under Section 8-103, its failure to abide by the directive that IPA programs constitute *expansions* of Section 8-103 programs (220 ILCS 5/16-111.5B(a)(2), (a)(3)(C)), and to encourage the Commission to provide direction to ComEd for future procurement and 8-103 Plan presentations. Moreover, to be clear, residential customers must receive a proportionate share of programs commensurate with the amount of dollars collected from residential customers through the Section 8-103 rider. ComEd's CFL program would *still* be offered to residential customers – the only difference would be that it would be offered under a different statutory provision of the Act. The program itself and its delivery to residential customers would remain identical.

Finally, ComEd argues that Mr. Mosenthal's recommendation that the additional energy savings that would be available in the Section 8-103 program portfolio upon removal of the CFL program in years 8 and 9 be applied to additional commercial and industrial programs, which are highly cost-effective, would increase costs to commercial and industrial customers. ComEd IB at 21. This argument is not persuasive, however. The People are not opposed to applying the program dollars made available by a transfer of the CFL program to the IPA portfolio in years 8 and 9 to additional residential programs. Moreover, the notion that adding more C&I programs "costs" more for these customers is debatable. The General Assembly has declared in Section 8-103 and 16-111.5B that the provision of cost-effective efficiency programs will reduce the cost of electricity – not increase its cost. *See, e.g.,* 220 ILCS 5/8-103(a), 16-111.5B(a)(3)(E).

The People urge the Commission to, at a minimum, enter an order in this docket that directs ComEd to include *both* the standard CFL and Behavior programs in their package of programs presented to the IPA in years 8 and 9 (2015 and 2016) of this three-year plan, so that increased energy savings over the life of ComEd Plan 3 (PY 7-9) can be achieved. This is particularly critical and reasonable in light of ComEd's admitted inability to achieve the annual energy savings goals provided under Section 8-103.

It should be noted, too, that when presented with these same arguments in the pending Ameren Illinois Company ("AIC") Plan 3 energy efficiency program approval docket, ICC Docket No. 13-0498, Ameren noted in its brief that if the Commission does remove programs from Plan 3 in anticipation of them being implemented through the IPA portfolio, the freed up 8-103 funds should be used for residential moderate income programs to replace those planned savings removed from that customer class (as recommended by CUB). ICC Docket No. 13-0498, AIC Brief at 36. ComEd can and should be as flexible and committed to expansions of residential efficiency programs as Ameren appears to be. A Commission order directing ComEd to do just that would ensure that goal is achieved.

B. ComEd's Commercial and Industrial ("C&I") Pilot Proposal

1. Savings From the C&I Pilot Should Be Added to ComEd's Goals

In the AG Initial Brief, the People argued that ComEd had failed to include any forecast of energy savings for its proposed Large C&I Pilot, and that based on AG witness Mosenthal's analysis, ComEd's savings goals should be increased by 76,388 MWh over the three-year plan. AG Ex. 1.0 at 12. In response, ComEd claims in its Brief that, while the Company could have been clearer in its evidentiary presentation, ComEd did, in fact, include an estimate of KWh

savings for the Pilot and incorporated those savings into the C&I Incentives program. ComEd IB at 22.

While the People have no reason to doubt ComEd witness Brandt's Rebuttal representation, the savings figure for the C&I portfolio still appears to be insufficient based on other evidence, and the analysis of NRDC witness Chris Neme. First, the suggestion that the C&I Pilot program savings are already included in the C&I Incentives program raises serious questions about the reasonableness of the Company's C&I Incentives program savings estimate, as pointed out in NRDC's Initial Brief. NRDC IB at 8-11. As Mr. Neme points out in response to a Com Ed data request (AG Cross Ex.2), when one combines the C&I Incentives and Large C&I Pilot program budgets, the cost per unit of savings from the combined program is *62% more* than the Company actually experienced in PY5. NRDC points out that this is a function of spending an average of \$5.1 million more per year on program implementation (a 74% increase over PY5) and \$3.1 million more per year on financial incentives (14% more than in PY5) while producing an average of 20% less savings per year than in PY5. NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 1.02, Attachment 1].

Com Ed offers four reasons for why it needs to spend a lot more in Plan 3 (NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 5.05]):

1. ComEd moved some measures out of its C&I Incentives program to its Midstream Incentives program;
2. ComEd moved savings from its C&I Incentives program to its Multi-Family program;
3. The expansion of its small business direct install program (funded through IPA) is expected to reduce participation of small business customers in the C&I Incentives program; and

4. The TRM will preclude the Company's ability to count T12 replacement/retrofit savings beginning in January of 2012.

NRDC Group Cross Ex. 1; NRDC IB 8-11. However, NRDC showed that NRDC witness Chris Neme's analysis and subsequent Com Ed responses to data requests clearly demonstrate that those factors cannot account for a 62% increase in the cost of the C&I Incentives program savings because:

1. Most of the measures that that migrated to the Midstream Incentives program (sometimes called the Business Instant Lighting Discounts program, or BILD program) did so prior to PY5. Com Ed estimates that the only measures that migrated out after PY5 – and therefore the only ones that could affect comparisons between PY5 costs per unit of savings and Plan 3 costs per unit of savings – accounted for only about 20 GWh of savings in PY5 (NRDC Group Cross Ex. 2 [Com Ed response to NRDC 6.03]). That represents only about 8% of the net savings generated by the C&I Incentives program in PY5 (NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 1.02, Attachment 1]). Moreover, those savings were not free. Thus, their impact on comparisons between PY5 costs per unit of savings and Plan 3 costs per unit of savings would be less than 8%.
2. The Company's proposed multi-family program savings is forecast to produce only about 9000 MWh per year of savings in Plan 3. Even if all of the savings from that program came from measures that were captured in the C&I Incentives program in PY5 – and that is clearly not the case – the savings they are forecast to produce would only amount to only about 5% of the savings the Company is forecasting for its C&I Incentives program in the Plan 3 years. Moreover, the Company is forecasting that the savings from its Plan 3 Multi-Family program are three times more expensive than those it will produce from its C&I Incentives program. Thus, it is far from clear that this shift has any material impact on comparisons on the cost per unit of savings, from PY5 to Plan 3 years, in the C&I Incentives program (AG Cross Ex. 2).

3. The Company estimates that only about 20% of the savings in its PY5 C&I incentives program came from small business customers (NRDC Cross Ex. 2 [ComEd response to NRDC 6.04]). Moreover, although the Company's small business direct install program is expected to grow substantially, it is still only expected to serve less than 10% of the eligible market each year (AG Cross Ex. 2). Put another way, the overwhelming majority of its small business customers – more than 90% in the first year, more than 80% in the second year, and more than 70% even in the third year – could still be served by the C&I Incentives program. Thus, over the three year period we would expect the impact on C&I incentives program savings (relative to PY5) to be less than about 5% (a three-year average loss of 20% of potential small business participants multiplied by the 20% program savings from such customers yields an approximate loss of 4% savings). *Id.*
4. The TRM changes to the T12 baseline do not go into effect until more than half way through PY8. They do not affect PY7 at all. However, the 62% average increase in the cost of savings over the three years of Plan 3 is not dramatically skewed towards the last year and a half. Even in PY7 – when the change in T12 baseline would have no effect – the Company is forecasting the C&I Incentives program cost per unit of savings in PY7 to be 54% higher than in PY5 (AG Cross Ex. 2).

NRDC IB at 8-11.

As NRDC noted, the four factors that the Company argues would lead to an increased cost per unit of savings in its C&I Incentives program appear to collectively account for no more than about a 20% increase – much less than the 62% average annual increase its plan suggests. If Mr. Neme's proposed 25,000 MWh per year increase in assumed savings for the program was adopted, which approximates Mr. Mosenthals's requested 76,388 MWh three-year total additional savings attributable to the C&I Pilot, the program would still cost \$203/MWh. AG Cross Ex. 2. That would still be about 42% more than the \$143/MWh the Company actually

experienced in PY5. *Id.* Thus, if anything, Mr. Neme's and Mr. Mosenthal's proposed increased in assumed savings is conservative.

In sum, the Commission should enter an Order that requires ComEd to revise its Plan 3 under Section 8-103(f) of the Act and increase the C&I Incentives program savings goals by either the 75,000 MWh figure provided by Mr. Neme, or Mr. Mosenthal's recommended 76,388 MWh.

2. The Commission Should Adopt ComEd's Proposal for a C&I Pilot, But Order ComEd to Work With REACT and SAG Members To Finalize Pilot Details.

In its Brief, ComEd urges the Commission to reject REACT's initial proposal for a large C&I self-direct program as unlawful, and instead approve its proposed C&I Pilot Program framework, jointly presented by the Company and REACT as Joint Ex. 1. ComEd IB at 56. REACT likewise proposes that the Commission approve the Pilot framework. The People support that request, with one caveat. Details associated with the Large C&I Pilot should be developed in the SAG, so that stakeholders can provide input on best practices and ensure that the final pilot is consistent with the goals and requirements of Section 8-103 of the Act.

The People note that the proposal presented in the ComEd/REACT Joint Ex. 1 represents a sea change in REACT's initial call for the creation of a self-direct program. As the People and ComEd noted in their respective briefs, Section 8-103 does not permit customers to opt out of the regular Section 8-103 revenue collection framework and self-direct efficiency investments or construct programs that authorize recognition of savings and retention of revenues over more than the statutorily authorized three-year period, established in Section 8-103(f). That fact stands in contrast to Section 8-104 of the Act, which establishes procedures for natural gas delivery

efficiency programs, and specifically authorizes qualifying customers to self-direct efficiency investments. *See* 220 ILCS 5/8-104(m).

The People applaud both ComEd and the REACT customers for hammering out a framework over the course of this docket that attempts to satisfy the concerns of large C&I customers, while satisfying the dictates of Section 8-103. Yet, as revealed in Joint Ex. 1, some questions remain about the details of program delivery. Concerns regarding these unspecified components are as follows:

- Eligible measures are defined as any project that saves electricity and passes the TRC cost-effectiveness test. While this is not an unreasonable starting point, it is not sufficient by itself to protect ratepayers and these funds from inappropriate use. For example, a project that has very small ancillary electric savings but passes the TRC test because of fossil fuel, water, waste reduction, or other benefits could theoretically require the electric Section 8-103 funds to commit to pay 67% of the entire cost of the project even with virtually no electricity savings. This is clearly problematic and not intended by this program or in the interests of ratepayers or ComEd. SAG discussions could address this potential issue.
- The document proposes that participants may submit a project “*at any time within the 3 year planning period.*” Joint Ex. 1. at 3. Once the project is approved the funds are “reserved.” It further requires “projects must be completed by May 31, 2017.” Finally, it says “unused funds *at the end of the three-year pilot* are returned to the general pool.” *Id.* The intent is that if participants do not use their funds, those dollars are transferred into the general C&I pool of funds for ComEd to spend in other programs – a concept the OAG supports. However, as written, ComEd has no way to know until the end of Plan 3 whether any funds remain as unspent, and if so how much. This means ComEd will have no ability to spend these unused funds on other programs, and will simply have to return the funds to ratepayers after reconciliation rather than roll them over into the next plan as additional money. This is problematic, assuming the goal of these programs is to create and satisfy Commission-established energy savings goals. One possible solution is to

require customers to submit applications no later than the end of PY8 to reserve funds to be used in PY9. That way, ComEd would at least have a year (PY9) to spend the unused funds elsewhere. SAG discussions could fine tune this point.

- The document states “project savings are subject to ComEd normal EM&V process that is lead [sic] by the independent evaluation.” Joint Ex. 1 at 3. While the People support this point, more clarification is needed as to how the EM&V process would be applied to this unusual, new program. For instance, if the project is determined later to not pass TRC, does the customer have to give money back? SAG discussions would explore this question.
- The document proposes that “co-funding from both this program and other natural gas programs is permitted.” However, more details and rules on project funding should be spelled out in any final Pilot program. For example, if the combined gas and electric rebates would exceed 100% of the cost, there is no clarity as to which funding would be reduced, and how such reductions would be determined. Second, because the intent of the required 33% co-funding is to ensure that customers actually contribute something and were pursuing cost-effective projects, incentive limits of some kind – perhaps the remaining 67% -- should be incorporated in the program. Also, it is unclear how ComEd would know about any other incentives the customers is pursuing. SAG discussions could focus on ensuring that the pilot includes funding disclosure provisions.

All of these cited issues and questions could and should be resolved in the SAG process.

Accordingly, the Commission should approve ComEd’s and REACT’s proposed large C&I Pilot framework, with the caveat that further details be discussed and resolved through the SAG process.

3. ComEd’s Proposed 5% Risk Reduction Proposal Should Be Rejected

As noted by the People in their Initial Brief, ComEd is seeking to further hedge against any form of risk by requesting to short its projected savings estimate by 5% of the estimated savings for each goal. AG IB at 20; ComEd IB at 25; ComEd Ex. 2.0 at 24. As discussed in

greater detail in the People's Initial Brief and below, this request is inappropriate. First, ComEd's quest to avoid all form of risk questions the very accuracy of its own projections. In addition, ComEd's *perceived uncertainty* does not warrant shifting the risk to ratepayers. Finally, contrary to ComEd's claims, no additional risk has been inserted into this docket that would require such a hedge. AG IB at 20-22. Therefore, the Commission should reject ComEd's proposal to reduce their risk by shifting it to ratepayers. As a counter-measure, the People propose increasing the goals to reflect 100% of estimated savings rather than 95%.

ComEd claims that it is merely seeking the 5% reduction to account for "risks inherent in the portfolio." ComEd IB at 25. However, as previously noted by the People, ComEd's request leaves questions as to the accuracy of its projections if it is seeking to cut its exposure to risk before the plan is even approved. AG IB at 21. Essentially, ComEd is now asking the Commission to only set its goals at 95% of what it actually plans to achieve. AG IB at 21; AG Ex. 1.0 at 13-14. ComEd also claims that risk associated with planning and evaluation serves as a driving force behind its request. ComEd IB at 25-26. However, as AG witness Mosenthal testified, the spending cap appear to be a driving force behind this request, which effectively serves as a buffer against the possibility that ComEd might not fully succeed. AG IB at 20; AG Ex. 1.0 at 13-14. As previously noted by the People, ComEd should be setting its goals based on what ComEd *actually plans* to achieve. According to Mr. Mosenthal, the requested reduction causes risk to shift away from ComEd and shift toward ratepayers. AG Ex. 1.0 at 13.

Moreover, ComEd's perceived uncertainty related to planning, evaluation, or the proposed Large C&I project, does not warrant its risk reduction strategy. As noted in the People's Initial Brief, ComEd has proposed a generally balanced portfolio that has built in ample room to make adjustments and mid-course corrections throughout the plan's three-year course.

AG IB at 21. Any one of these adjustments will provide ComEd with more than sufficient “wobble room” to make up for any assumptions that may turn out to be too aggressive.

Additionally, presuming that ComEd’s plan numbers represent the best estimate of impacts, then there is an equal probability that savings could be higher or they could be lower. AG IB at 22; AG Ex. 1.0 at 14. With this in mind, because the TRM deems savings values for the vast majority of ComEd’s efficiency measures and all parties agree that NTG values should ultimately be deemed, ComEd’s risk has been greatly minimized (versus its risk level prior to implementation of the TRM) and should fall well within the range of what can be effectively managed through corrections and adjustments during the Plan 3 period. AG Ex. 1.0 at 14.

ComEd continues to argue that its risk reduction proposal is necessary because Staff and the People are introducing additional risk associated with their proposed NTG framework. ComEd IB at 26-27. ComEd’s assertions in this regard are simply mischaracterizations. First, as previously noted by the People, ComEd is already asking for modified goals lower than the statutory goals and should be obligated to set goals that attempt to maximize savings given the existing budget constraints without seeking any greater downward modification than absolutely necessary. Given that ComEd should have presented its best estimates in this docket and that ComEd’s proposed numbers are what it objectively believes can be achieved, there is no basis for rewarding ComEd with a 5% reduction in its risk. AG IB at 22; AG Ex. 1.0 at 14.

Finally, ComEd cites to Mr. Mosenthal’s testimony in an effort to support its claims that the People are injecting risk into the portfolio. ComEd IB at 26. However, a closer read of the cited testimony, reproduced below, reveals that there is no such injection of risk.

Q. Does AG Exhibit 1.1 allow for and provide the certainty to ComEd by March 1 in all cases?

A. It may not. The intent of AG Exhibit 1.1 is to provide this certainty by March 1 through reaching consensus on a set of deemed values that would then

be filed with the Commission by March 1. However, I acknowledge that in the event complete consensus is not reached, there is still some uncertainty at March 1. The intent is that there are clear default provisions for resolving non-consensus. Moreover, *the new framework would significantly reduce any uncertainty*, and for new programs where there is no historic value to default to, it is intended the ICC could issue an order resolving the NTG value prior to the beginning of each program year. While this technically creates a potential for continued uncertainty for a few months, I believe this will provide strong encouragement to all SAG parties to reach consensus. *In the worst case, ComEd would still have certainty by the start of the program year*, which is most important.

AG 1.0C at 32-33.

[Staff's proposal] provides less certainty to the utilities than my proposal, but allows use of more current evaluations that in general should better reflect the likely current and future performance of the program.

AG 1.0C at 34.

[Staff's proposal] provides a reasonable but significant incentive for all parties to reach consensus on a best estimate of future NTG ratios, because failing to reach consensus would result in less certainty and potentially more risk to all parties.

AG 1.0C at 35.

When read more closely and in their appropriate context, the cited passages reveal Mr. Mosenthal's intent to provide ComEd with additional long-term certainty in its portfolio – not inject risk. In the first passage, Mr. Mosenthal explicitly states that a goal of the framework is to “*significantly reduce any uncertainty.*” In the second passage, the only mention of “less certainty” is related to Staff's proposal not providing *as much* certainty as Mr. Mosenthal's. In the third passage, the only potential for less certainty would occur *if there was a failure to reach a consensus*. In no way do the cited portions of testimony indicate that the People are attempting to increase the level of risk. Therefore, contrary to ComEd's argument, the intervenors are not introducing *new* risk into this docket. Rather, these parties simply disagree with ComEd's request to *remove* the risk.

In summation, as described in greater detail in the People’s Initial Brief, goals should be set based on ComEd’s best estimate of impacts, and that the diversity of its portfolio and measures promoted provides sufficient risk protection to it without this further 5% decrease. Therefore, the Commission should reject ComEd’s proposed 5% reduction of its achievable savings estimate to reduce its risk exposure.

C. ELPC’s Proposal for a Voltage Optimization Program

There appears to be some level of consensus between ComEd, ELPC, and the People that the Commission should order a feasibility study of a voltage optimization (“VO”) program. *See* ComEd IB at 48; ELPC IB at 20-21; AG IB at 25-26; *see also* ComEd Ex. 3.0 at 38. However, ComEd continues to push for this study to be funded through limited Section 8-103 funds. ComEd IB at 48. The People reiterate that it is inappropriate to pursue this measure with the very limited demand-side management funding resources in Illinois. AG IB at 25; AG Ex. 2.0 at 12. It should be noted that ELPC now supports funding the proposed study through sources other than the limited efficiency funds. ELPC IB at 22. Therefore, the People urge the Commission to order the feasibility study and allow ComEd to recover any costs associated with a study consistent with how it recovers other distribution system capital and maintenance costs, and not use the limited DSM funds established under Section 8-103 of the Act for this purpose.

In their Initial Brief, the People noted that VO technology *can be* a cost-effective approach to better manage the electrical grid and it can achieve some reductions in energy demand. AG IB at 23, 24. However, allowing VO to be funded through limited efficiency funds not only competes with many other cost-effective efficiency opportunities and programs that ComEd can offer its customers, it would diverge from the traditional utility responsibility of managing its distribution system in such a way as to minimize ratepayer costs subject to

appropriate standards of reliability and safety. AG IB at 24. As previously noted by the People, adopting VO is a supply-side solution to efficiency that is completely under the control of the utilities, is invisible to customers, and does not require any customer action to be successful, unlike efficiency and demand response programs created under Section 8-103 of the Act, which were established to *work with customers* to assist them in investing in improving the efficiency of their facilities.. AG IB at 24-25. The efficiency and demand response programs enabled by Section 8-103 of the Act are designed to *engage customers* – which is not an express goal of VO. AG IB at 25. Finally, the People also noted that the utilities have separate obligations to build and maintain efficient and effective distribution systems for which they can recover costs (and frequently earn a return) through various statutory and regulatory vehicles.

For the detailed reasons presented in the People’s Initial Brief, the People reiterate their opposition to ELPC’s alternative proposals to certify VO as a qualified resource in meeting efficiency standards or reprioritize the Plan 3 programs. AG IB at 25-26. In summary, the People noted that these alternatives were not feasible, produced contradictory results, and were not reasonable. AG IB at 25-26. Therefore, the People urge the Commission to reject ELPC’s alternative proposals.

Therefore, the People urge the Commission to order ComEd to undertake the feasibility/potential study described by Mr. Volkmann. Any costs associated with this study should be recovered through the normal delivery service charges and not recovered from the limited Section 8-103 funds. The Commission should also make it clear to ComEd that implementation of VO should occur when it is best estimated to be a least-cost solution for ratepayers and the Commission should also identify an appropriate cost recovery mechanism separate from the Section 8-103 programs and funding mechanism to facilitate a VO program.

III. BANKING AND CFL CARRY-FORWARD SAVINGS

A. ComEd's Request to Carry-Over Banked Savings from Plan 2 into Plan 3 Should Be Rejected

ComEd requests that the Commission permit it to carry over into Plan 3 any banked savings accumulated in Plan 2. ComEd IB at 90. In support of this request, the Company points to the Commission approval of carrying over banked savings from Plan 1 to Plan 2 in Docket No. 10-0570. *Id.* This request should be rejected for several reasons.

First, parties agreed to the carryover of banked savings and the Commission approved the carryover from Plan 1 to Plan 2 in that docket as a part of a global settlement of many issues in that proceeding. No such settlement has been constructed in this docket.

Second, since that settlement, Section 8-103 has been modified, as ComEd itself point out in its Brief, to specifically permit intra-Plan banking within the three-year Plan period. ComEd IB at 89; 220 ILCS 5/8-103(b). No such authority is specified for banking between three-year plans.

In addition, Section 8-103 requires utilities to achieve *annual* savings goals. 220 ILCS 5/8-103(b). While the Commission authorized banking back in its 2008 order in Docket No. 07-0540, the Commission did so in response to utility claims that without banking, achievement of annual statutory energy savings goals would be difficult if not improbable. See ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41. The Commission further expressed concerns that if banking were to grow too large, it would be inconsistent with legislative intent for meeting annual savings goals pursuant to Section 8-103(b), and therefore limited allowable banking:

Limiting the amount of allowable "banked energy savings" to a percentage of the banked year's energy savings is reasonable. It is also reasonable to limit the amount that can be "banked" to one which would only allow utilities to "bank" a *de minimis* carry over, as anything further would violate the statute. Therefore, ComEd's and DCEO's request for Commission approval of "banked" energy savings

is granted, but, they may "bank" no more than 10 percent of the energy savings required by statute in the year, in which, it is "banked."

Commonwealth Edison Co., Docket No. 07-0540, Order of Feb. 6, 2008 at 40-41. ComEd's request violates this precept because its banking proposal, if granted, would greatly exceed the 10% ceiling on permissible banked savings. The most recent banking balance that would exist following completion of savings verification for PY5 has yet to be determined. Further, because PY6 is currently pending and ends on May 31, 2014, the final determination of what banking might be available by the end of PY6 (otherwise known as the end of the current Plan 2 period) is not yet known. However, in response to NRDC data request 2.02, ComEd estimated that as of the end of PY6 (end of Plan 2), ComEd's total accumulated banked savings will be 491,695 MWh. AG Ex. 1.0 at 17.

As noted in the AG Initial Brief, it is important to note when examining the banked savings is that this forecasted banked amount at the beginning of Plan 3 is **87% of ComEd's proposed PY7 goal and 30% of the cumulative three year Plan 3 goals.**² AG Ex. 1.0 at 17. In other words, if these goals are inclusive of any applications of prior banked savings as ComEd requests, ComEd could effectively completely shut down its programs for almost the entire first year of the three-year plan and still meet its goals. Clearly, the constant accumulation of banked savings to the point where the amount constitutes such a significant portion of a year's goals exceeds any notion of the Commission-required *de minimis* amount.

ComEd argues in response to that point in its Brief that it would limit the amount of banked savings applied to the limitation included in the Plan settlement – 15%. ComEd IB at 90. But, as noted above, that figure was part of a settlement, agreed to by all parties in the docket.

² From p. 3 of ComEd's Plan 3 net goals (not including DCEO portion) are 565,593, 548,664, and 523,856 MWh for 2014-2016, respectively.

No such settlement exists here, and the proposed 15% cap exceeds the 10% amount previously identified by the Commission as the maximum level (absent a global settlement) that would be permitted. ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41.

ComEd also asserts that permitting banking between plans is appropriate because the Commission stated in its Plan 2 Order that permitting banking would assist the utility in achieving a modified energy savings goal. ComEd IB at 91. But a review of the Commission's Plan 2 Order does not support ComEd's arguments. The Commission specifically stated, "*Given the circumstances in this docket*, the Commission approves the banking provisions set out in the Stipulation. *Of course, the approval of banking here does not guarantee approval of banking for future three year plans.*" Docket No. 10-0570, Order of December 21, 2013 at 54. The Commission could not be clearer that its approval of inter-Plan banking was limited to the circumstances in that Docket. Those circumstances, including a global settlement, are not present here.

Finally, ComEd makes no offer to increase its forecasted Plan 3 goals by the amount it seeks to carry over from Plan 2. Thus, banking beyond that which is specifically permitted under Section 8-103(b), diminishes the Company's incentives to modify programs as need be to ensure delivery of maximum energy savings. Moreover, as noted in the AG Initial Brief, from a policy perspective, the importance of banking savings is significantly diminished due to the cost cap inherent in Sections 8-103(b) and 8-104(b). AG IB at 29. Because the Section 8-103 goals continue to increase while budgets remain capped, Plan 3 and any future plans (barring a legislative modification) will require modified goals. Under these modified goals, any available banked savings must be added to them to arrive at a reasonable achievable target within the budget limits. Therefore, Mr. Mosenthal notes, banking becomes a zero-sum game. AG Ex. 1.0 at 21. In other words, there is no real difference whether the Commission grants ComEd X MWh of banked savings for the next year and then increase its goal by X MWh, or simply

discontinue counting banked savings. If goals are no longer set by legislation but simply set as the most the available budgets can support, then simply adding in extra banked savings provides no real incentive, because the utilities would simply have to meet a higher goal if it achieves more banked savings. *Id.*

For all of these reasons, the Commission should deny ComEd's request to permit banking between three-year plans, and its specific request to carry over yet-to-be determined banked savings from Plan 2 to Plan 3.

B. ComEd's Savings Goals Should Be Adjusted Upward to Account for CFL Carryover Savings.

In this case, ComEd has stated that for planning purposes, it has not included CFL carryover savings from previous years that are tied to the recognition that customers regularly delay installation of CFL bulbs, thereby impacting the recognition of energy savings. However, that position ignores the fact that currently ComEd is given credit, going forward, in annual energy savings reconciliation docket, for the delayed energy savings associated with CFL bulbs, as discussed above. If the Commission grants ComEd's request to continue counting CFL carry-forward savings as the current TRM dictates, then ComEd's savings goals amount approved in this docket must be adjusted to account for the additional carry-forward savings that it would accrue from Plan 2, to be counted in the next three-year plan.

As noted in the AG Initial Brief, ComEd provided CFL savings from prior years, as well as its expected CFL savings from PY6 in response to discovery. AG IB at 31. From these data, given the current values in the TRM, Mr. Mosenthal calculated that an additional savings of 83,468 MWh could be applied to PY7 savings goals and 28,270 MWh could be applied to PY8 goals, for a total additional savings from CFL carry-forward of 111,738 MWh. While Mr.

Mosenthal acknowledged that the exact amount of CFL carry-forward that could be counted in Plan 3 is not known with certainty, this estimate should be approximately correct. *Id.* In combination with the estimated accumulated banked savings of 491,695 MWh referenced above, total additional savings available to ComEd could potentially total 603,433 MWh. This exceeds ComEd's proposed PY7 goal and is more than one third of ComEd's proposed three-year goal. AG Ex. 1.0 at 17.

While ComEd did not include any CFL carryover it will have accrued at the end of Plan 2 that could be counted in Plan 3 in this docket, the Company did include the full, ultimate savings over time from each CFL within the year it was actually purchased in Plan 3, unlike prior CFL savings calculations, for purposes of Plan 3, that account for the delay in customer installations. In other words, the PY7 CFL savings figure represents not only the savings that could be claimed in that year, but also the subsequent savings that would be claimed in PY8 and PY9 from these bulbs, as determined by the Technical Reference Manual ("TRM"). *Id.* at 19.

As a result, Mr. Mosenthal testified that ComEd slightly overestimates the actual savings it will be able to claim from new CFLs sold in Plan 3, absent any change in the CFL carry-forward approach, which does not recognize CFL savings until subsequent years under the current TRM.

Because the overall volume of CFL bulbs promoted is expected to drop significantly, and the baseline assumptions in the TRM continue to decrease over time as a result of federal standards, the additional savings ComEd is including in its Plan 3 are significantly smaller than the carry-forward savings from Plan 2 that it is omitting. Specifically, AG witness Mosenthal calculated that ComEd has included approximately 32,739 MWh in Plan 3 of additional CFL savings from its PY8 and PY9 activity that it would actually not be able to claim until PY10 and

PY11. In summary, ComEd did not include 111,738 MWh of estimated CFL carry-forward from Plan 2, but has counted an extra 32,739 MWh in Plan 3 that they would not actually be able to count under current procedures. This results in a net adjustment (assuming this net is added to ComEd's proposed goals) of an additional 78,999 MWh. Id. at 19-20.

The OAG urges the Commission to take into consideration these banked and carry-forward savings from prior plans that will be recognized as savings, if the ICC permits the recognition of banked and CFL carry-forward savings to continue, as ComEd has requested.

If CFL carry-forward is continued to be permitted by the Commission, then 78,999 MWh should be added to ComEd's goals in this docket, to reflect the delayed recognition of CFL savings that will increase ComEd's amount of banked savings.

AG witness Mosenthal argued, as an alternative to adding the unaccounted for banking and CFL carry-forward savings from Plan 2 to ComEd's Plan 3 modified goals, that the Commission could eliminate the CFL carryover process (along with inter-Plan banking), and simply assume they are installed in the year they are purchased, which is what ComEd did in establishing projected savings for new CFL purchases in Plan 3, unlike prior CFL savings calculations. This would simplify the planning and goal setting process, because the exact banking and CFL carry-forward values cannot be known with certainty at this time. While ComEd complains that would require modification to the TRM used in Plan 3, the Commission has the authority to do so in this docket. ComEd IB at 24-25. Contrary to ComEd's position, there is nothing prohibiting the Commission in its review of both energy savings to be achieved and evaluation processes to be followed, to make a finding that the TRM should be modified for CFL evaluation purposes in Plan 3. This finding could similarly be made in Ameren's Plan 3 docket, Docket No. 13-0498 for purposes of consistency.

In its Brief, ComEd argues that the AG has conflated banking and CFL savings in its recommendation. ComEd IB at 24. That is not true. The AG recognizes that banking and CFL carry-forward are separate, however, the issues in this Docket are interrelated because both of these policies will provide ComEd with additional savings created by Plan 2 activity that can be counted by ComEd in Plan 3 to help it meet its goals. To the extent that ComEd is seeking approval of banking between plans, and CFL energy savings calculations are currently delayed by design, that conflation is necessary for purposes of setting energy savings goals in this docket.

Thus, if the Commission permits ComEd to transfer banked savings and/or CFL carry-forward savings from Plan 2 to Plan 3, the approved level of savings in Plan 3 must take into account these additional savings that will serve to offset savings goals in Plan 3. Under that scenario, ComEd will have to work less to achieve savings goals that do not recognize the banked and CFL carryover savings totals. The OAG recommendation is targeted at ensuring that the carryover amounts of CFL savings are recognized going forward in the establishment of Plan 3 savings goals, and should be adopted by the Commission. As noted above, if CFL carryover and banking are not adopted, then the Commission should enter an Order that revises the TRM procedure to eliminate the CFL carryover process (along with inter-Plan banking), and simply assume they are installed in the year they are purchased.

IV. COMED'S PROPOSAL FOR UNLIMITED FLEXIBILITY

The People, in their Initial Brief, noted that ComEd is essentially proposing unlimited flexibility to modify its Plan 3 provided that it is consistent with statutory or regulatory rules. AG IB at 35. In response, the People urged the Commission to adopt some limitations that would hold ComEd accountable for seeking approval for budget shifts of greater than 20 percent.

ComEd, however, claims that accepting the People’s proposal would “hamstring” the Company and prevent it from attaining its goals. ComEd IB at 93-94. As discussed in greater detail below and in the People’s Initial Brief, the Commission should not be swayed by ComEd’s empty assurances that it is not seeking unlimited flexibility when the reality clearly demonstrates the opposite: ComEd could conceivably game the system in order to easily meet its goal simply by shifting from more expensive to less expensive programs. Therefore, the People once again urge the Commission to adopt their reasonable limitations to ComEd’s flexibility.

ComEd continues to argue that, essentially, they are seeking to maintain the *status quo*, but ComEd’s testimony speaks to the contrary, particularly where it is stating that it: “will require the flexibility necessary to manage the costs and the program and customer mix to determine when funds are reallocated and to properly manage the portfolio.” ComEd Ex. 2.0 at 58. As noted by AG witness Mosenthal, this level of flexibility effectively amounts to unilateral permission to make changes as ComEd sees fit absent stakeholder or Commission approval. AG IB at 35-36; AG Ex. 1.0 at 24. Therefore, the People urge the Commission to not be swayed by ComEd’s unsupported assurances that it is not seeking unlimited flexibility and place reasonable limits on ComEd’s portfolio flexibility.

By and large, the parties in this docket agree that Program Administrators should be given some level of flexibility in the delivery of energy efficiency measures. AG IB at 35. However, the People reiterate that ComEd’s request for flexibility exceeds what could be labeled as a *reasonable* amount of latitude. AG witness Mosenthal characterized ComEd’s request as “far too broad”, and noted that the proposal opens the door to allow ComEd to “game the system.” AG IB at 35; AG Ex. 1.0C at 24. The People noted in their Initial Brief that changes to the Public Utilities Act since the last Plan approval place budget constraints that drastically limit

the goals selected. AG IB at 36. The People also provided a relevant and realistic example of how ComEd could hypothetically choose to shift significant funds from relatively expensive programs to relatively inexpensive programs. AG IB at 36-37. To summarize that example, an analysis by Mr. Mosenthal revealed that the most expensive program *costs 35 times more* per unit of savings than the least expensive program. AG IB at 37. Hypothetically, if ComEd chose to shift a significant amount of funds from the more expensive programs to the more inexpensive programs, it would be far easier for ComEd to meet its goals. Essentially, with a simple shift of resources, ComEd would be able to pursue a different and cheaper plan than the one that the Commission approved. AG IB at 37; AG Ex. 1.0C at 26.

If the Commission were to grant ComEd its requested flexibility to shift funds, ComEd could virtually guarantee itself to easily meet any approved goal by simply shifting more resources to the cheapest programs, thus “gaming” the system. Because the budget cap constraints now in place prevent ComEd from pursuing all cost-effective efficiency resources in each market, they have significantly more flexibility to ramp up the least expensive programs. AG IB at 36. Therefore, the reality is simply that ComEd *could* game the system in order to easily meet its goal simply by shifting from more expensive to less expensive programs. AG IB at 36-37.

The People, in their Initial Brief, presented an alternative that asks the Commission to establish limits on flexibility that *would not prevent* ComEd from exceeding them should they so choose, but rather, would trigger goal adjustments if any budget shifts result in a variance from planned annual program budgets of 20% or more. AG IB at 38-39; AG Ex. 1.0C at 27. This plan could also work in ComEd’s favor if it is having success with an expensive program and wanted to shift funds into it from a cheaper program. *Id.*

Finally, Mr. Mosenthal recommended that the Commission order ComEd to first bring any proposed modifications to the SAG for discussion and ideally to build consensus around the change. This should happen whether or not the 20% limit is exceeded, but is particularly important for significant changes. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation. *Id.* at 34-35.

ComEd further argues that it has exercised similar flexibility in previous plan years and that it will still vet certain changes with the SAG. ComEd IB at 93. While the People appreciate ComEd's continued commitment to the SAG, this does not change the potential that the scenario described by Mr. Mosenthal could come to fruition. ComEd's proposal provides for no approval process or backstop. As to ComEd's previous exercise of such flexibility, the People reiterate that history has effectively changed due to the implementation of spending caps and the adoption of the TRM. Such flexibility is no longer necessary or recommended. The People, therefore, urge the Commission to adopt their limitations to ComEd's proposed flexibility.

Staff, for its part, recommends some accountability measures related to ComEd's requested flexibility that includes enhanced reporting to the Commission during the reconciliation reports. Staff IB at 55-56. While the People appreciate Staff's additional accountability measures, these measures do not go far enough to prevent the situation that the People have previously described where ComEd could take advantage of an opportunity to shift resources in such a way as to swap out resources or otherwise "game the system." AG IB at 37. It should also be noted that CUB supports the People's proposal, finding them "reasonable" and noting that, if the Commission adopted ComEd's requested flexibility, "the Company would be

able to essentially implement a different plan than the one being litigated in this docket.” CUB IB at 20.

To be clear, the People reiterate that they are not seeking to constrain ComEd from making the choices it needs to make to manage its portfolio. Rather, the People are simply recommending that the Commission establish *some limits* on flexibility. The proposed limits would not serve to prevent ComEd from exceeding them if they should so choose. Rather, the exceeding of a limit would trigger a goal adjustment in the event ComEd choose to exceed them. Therefore, the People urge the Commission to adopt their proposal on portfolio flexibility.

For all of these reasons as well as those presented in the People’s Initial Brief, the People urge the Commission to adopt the People’s proposal to limit flexibility such that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments should be adopted by the Commission. Further, the Commission should enter an Order that makes clear that utilities should continue to bring all proposed program shift proposals to the SAG for input and comment.

V. EVALUATION, MEASUREMENT & VERIFICATION

A. ComEd’s Proposed NTG Methodology Should Be Rejected by the Commission

As the Commission considers the two modified NTG frameworks being proposed in this docket, one important fact should serve as the starting point for the Commission’s analysis: currently, each utility and DCEO has its own independent evaluator. Unfortunately, that fact has resulted in the application of sometimes inconsistent evaluation processes among utility and DCEO programs. While the SAG’s creation of a TRM, designed to provide transparency and consistency in applying consistent values in the calculation of energy savings, the application of net-to-gross ratios, remains unsettled policy.

With that in mind, the AG and the Commission Staff offered modified NTG frameworks, which would be applied to all utility Program Administrators and attempt to consistently evaluate both spillover and free ridership in efficiency measures in order to determine *net* energy savings.

In its Brief, ComEd advocates for the adoption of a modified NTG framework that permits its evaluator to operate as “the key decision-maker” on estimating NTG ratios. Consultation with the SAG is permitted, but ComEd’s evaluator, not the Commission, would have the final word on establishing prospective NTG ratios. ComEd IB at 68. Staff’s proposal, on the other hand, is modeled after the existing TRM annual collaborative updating process. As laid out in Staff’s Initial Brief, the NTG framework envisions collaboration among all electric and gas utility evaluators as well as stakeholders through the SAG process. Staff IB at 32-36.

In its Brief, ComEd falsely claims that the Staff/AG proposal elevates the SAG to decision-maker, a role that ComEd says is inconsistent with its advisory function. ComEd IB at 69. That argument falls flat upon any kind of reflection, however. The SAG, under the Staff/AG proposals, would operate as it always has: as an advisory, collaborative body that has reached consensus on many matters, including the development of the Commission-approved TRM. That TRM, once created, was presented to the Commission for its approval in Dockets 12-0528 and 13-0077. In this docket, the Staff-proposed modified NTG framework present a roadmap for consensus building and next steps when consensus cannot be achieved. The AG- and Staff-proposed frameworks in no way usurp Commission authority. Those procedures for consensus and non-consensus-building are transparent and efficient, as set forth at pages 32-36 of Staff’s Initial Brief.

If any proposal points to consolidating power, it is the Company's. In the ComEd framework, the Company's evaluator holds all decision-making authority. There is no more involvement of the Commission in the ComEd process than in the Staff/AG frameworks.

As noted in the AG Initial Brief, the Staff-proposed framework, with two caveats discussed below related to voting parties and spillover assessments, should be adopted. Unlike the ComEd proposal, it provides incentives for the Utilities to build consensus because not all risk has been eliminated in the NTG assessment process. The intent of both AG Exhibit 1.1 and the Staff-proposed modified NTG framework is to provide the utility's certainty by March 1 through reaching consensus on a set of deemed values that would then be filed with the Commission by March 1. While there is still some uncertainty in the event complete consensus is not reached by March 1, the framework itself is designed to encourage consensus building, and there are clear default provisions for resolving non-consensus.

A key factor that makes the Staff NTG proposal better than ComEd's relates to the process to be used when consensus on a NTG value is not reached by March 1 in a year. In AG Exhibit 1.1, Mr. Mosenthal proposed that if consensus on an existing program NTG is not reached, then the past two *prior and already available* evaluation NTG estimates would be averaged, and used prospectively for the following program year. AG Ex. 1.0 at 34. ComEd proposes that evaluations for existing programs be based on a prior evaluation, to be applied prospectively, "until a new ComEd evaluation estimates a new NTG ratio. For new programs, planning NTG ratios are used until a ComEd evaluation estimates a revised NTG ratio. ComEd further limits SAG involvement to a presentation by the ComEd evaluator, with SAG having an opportunity to question values and suggest modifications to values. The evaluator will make the final determination on a NTG value. ComEd IB at 68.

For instances when consensus is lacking, Staff proposed a slightly different approach that provides the utilities with slightly less certainty. Specifically, Staff's proposal is that the last two years' evaluation NTG estimates be averaged. The distinction is that, at the time of filing with the ICC, the evaluations for the immediately prior program year are generally not yet available. As a result, Staff is proposing averaging one, known NTG estimate (PY_{t-1}) with one, as-yet-unknown-NTG estimate (PY_t). This provides less certainty to the utilities than Mr. Mosenthal's original proposal, but allows use of more current evaluations that in general should better reflect the likely current and future performance of the program. The People support that approach. *Id.*

As noted in the AG Initial Brief, while Mr. Mosenthal testified that he is amenable to providing the utilities with more certainty than they have had in previous years, Staff's approach is superior for two reasons:

- First, it will result in, all else equal, likely better estimates of actual future NTG ratios because *the most recent evaluations* will be incorporated and thus should best reflect the current status of the program and market; and
- Second, it provides a reasonable but significant incentive for all parties to reach consensus on a best estimate of future NTG ratios, because failing to reach consensus would result in less certainty and potentially more risk to all parties.

AG Ex. 1.0 at 35. Mr. Mosenthal noted that under his proposed framework, the last two already available evaluation NTG estimates are averaged, which would reflect program years that are one and two years old at the point of adoption. Because these NTG estimates are already known, any inability to reach consensus on a NTG estimate means that all parties will necessarily know with certainty what the ultimate default NTG estimate will be if there is no consensus. As a result, this creates a greater likelihood that a party might have a diminished desire to reach consensus whenever they prefer the known value from prior evaluations. In

essence, a party can unilaterally “game” the process, and refuse to agree to any reasonable NTG value they prefer less to the known NTG default value that would be adopted without consensus. This creates a perverse incentive to not engage in consensus-building, and thus I support Staff’s framework on this point. *Id.*

The Staff approach is a reasonable compromise that still significantly limits the risk to program administrators. That’s the case because one of the two values that would be averaged is already known. Therefore, even if a future evaluation estimates a surprising NTG value, the impact on the program administrators is diluted because it is averaged with the one already known and certain. This is a reasonable compromise that significantly diminishes program administrators’ risk and, importantly, likely results in a somewhat more current and better estimate of the actual NTG ratio that would result in the next program year. This methodology also serves to avoid perverse incentives that discourage parties to work together in good faith to achieve consensus. It is important to note that if parties achieve consensus, then all NTG values are certain, which is the intent of the new framework. *Id.* at 36.

ComEd argues in its Brief that the existing NTG framework proved difficult to apply because whether an updated ratio was applied prospectively or retrospectively depended on whether “market change” in a measure had occurred. ComEd IB at 69-70. While the People acknowledge that past difficulty, both the Staff and AG proposals eliminate that phrase as a criterion for applying various evaluation methodologies. Thus, this criticism rings hollow. The new Staff and AG recommended modified frameworks allow for deeming NTG values *in all cases*, and simply requires that *EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program, even when there is no historic Illinois evaluation to rely on or whether or not a program or market is undergoing*

significant change. This is a key difference in the competing approaches: the Staff/Intervenor approach incorporates many sources of data – not just a single Program Administrator’s evaluator’s report – for establishing NTG values that can be equitably applied statewide. Further, they establish a schedule that, if kept to, resolves concerns about not having certainty by March 1, as noted in the AG Initial Brief.

In sum, ComEd’s characterization of the Staff/AG methodologies as unlawful decision making power grabs should be dismissed. If these consensus-building frameworks are unlawful, then so was the creation of the TRM, which annually relies on a collaborative consensus-building, fact-based, evaluator-driven process. No party, including ComEd, believes that is the case.

B. Staff’s Modified NTG Framework Should Be Modified To Limit Voting Parties

Finally, as noted in the AG Initial Brief, AG witness Mosenthal proposed sensible limitations on any voting structure included in the Staff NTG consensus-building process. In sum, the Commission should adopt Staff’s proposed modified NTG framework, with the inclusion of a definition of voting parties that (1) limits participants to regular SAG attendees; (2) limits each party to a single vote; and (3) ensures that voting members (outside of the individual utility) have no financial interest in the outcome. It is important that any NTG procedures be consistent and applied equally to all program administrators.

Staff’s approach in practice could allow literally anyone to attend a SAG meeting and refuse to agree to a NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, or whether they have ever intervened or otherwise been involved in energy policy in Illinois. In addition, as noted in the AG Initial Brief, many attendees at the SAG are subcontractors to another party. For example, consultants helping the

program administrators design and plan programs, evaluators, and implementation contractors who sometimes are paid based on performance could conceivably vote under Staff's approach and have a clear conflict of interest in regard to the ultimate NTG ratio. Clearly, it would be inappropriate to allow these parties a formal vote because they generally are attending the SAG as contractors to some other party that *already has a vote*. In addition, evaluation consultants' role is to inform the parties of the results of their independent analysis -- not to have a vote in the SAG. As the NTG framework describes, they are tasked with working together as independent parties to propose NTG values based on their professional expertise. In addition, any party that has subcontracted with a utility to provide programs should not be permitted to vote on evaluation parameters. The Staff-recommended "anyone can vote" rule would permit utilities to have multiple votes by allowing subcontractors who have financial stakes in the process to vote -- clearly not a desirable result. Staff's approach even permits the SAG facilitator to vote, something that has never occurred to date. AG Initial Brief at 47-48.

Staff's Initial Brief was silent on this issue. ComEd pointed to the disagreement as evidence that "underscores that the AG was never intended to be a decision-making body, and is quite ill-suited for the role." ComEd IB at 71. But that rhetoric ignores the significant accomplishments of the SAG, including the development of an annually updated TRM and TRM Policy document.

For all of the reasons stated above and in the AG Initial Brief, the Commission should adopt the Staff-proposed NTG framework, for ComEd (and other utility Program Administrators) with the voting limitations recommended by AG witness Mosenthal.

C. The Staff-Proposed NTG Framework Should Apply To All Utility Program Administrators

ComEd creates another strawman argument by objecting to AG witness Mosenthal's observation that the modified NTG framework should be adopted statewide in each utility docket. ComEd IB at 77. ComEd, however, does not explain why requiring consistent applications of NTG evaluations statewide would create a problem for ComEd or any other utility. *Id.* Consistency in the application of evaluation parameters in the calculation of energy savings is an important goal for ensuring equal treatment of utility programs. This is not to suggest that programs do not vary among utilities. However, the application of fact-based NTG analysis should apply consistently among each utility evaluator. ComEd's opposition to that reasonable goal should be dismissed.

That being said, the Commission can accomplish this goal in each docket based on the evidence presented. No sweeping directive need be included in the Commission's order in this docket.

D. Assessments of Spillover, Deemed or Evaluated, Should Be A Part of NTG Analysis.

After some minor confusion as to ComEd's position on the need to incorporate both free riderhip and spillover analysis in NTG measure calculations, it appears that the AG and ComEd are in agreement that evaluators should estimate spillover impacts when no study exists or it is impractical to quantify spillover. ComEd IB at 78-81; AG IB at 49-51. For its part, Staff argues that spillover should be considered, "although it may not always be included in estimates." Staff IB at 10. Staff's proposal would leave exclusion of spillover to evaluators. *Id.*

The People urge the Commission to reject this Staff proposal. Spillover, as noted in the AG Initial Brief, constitutes an important aspect of the calculation of energy savings and has

been deemed in past evaluations. AG IB at 50. Deeming spillover based on prior fact-based evaluations fairly credits the spread of efficiency, while also preserving limited evaluation dollars. The AG's proposal to deem spillover when such assessments are not practical should be adopted.

E. ComEd's Proposed Realization Rate Adjustment

In a further effort to strip itself of any risk of noncompliance with approved savings goals, ComEd proposes that realization rates should be deemed at values different than 1.0. ComEd IB at 84. In their Initial Brief, the People provided detail supporting their position that realization rates should be presumed to be 1.0. AG IB at 51-53. ComEd, however, argues that it provided historical rates as support for its proposal and that removing these would artificially inflate its goals. As discussed below, and in the People's Initial Brief, the People find no merit to ComEd's argument and urge the Commission to reject ComEd's proposal.

Initially, as background, it is important to remember that Mr. Mosenthal defines realization rates as the ratio of the *evaluator-estimated* savings to the *utility-estimated* savings. AG IB at 52. In simplest terms, it reflects the variance between what the utility initially claims to be savings and what the evaluators ultimately verify to be the final evaluated impacts. *Id.* While plans and forecasts can certainly be inaccurate, the realization rate reflects nothing more than an adjustment based on any inappropriate or incorrect counting of savings. Conceivably, gross savings variances could come from a number of factors over which ComEd has control, including utility errors in its database, failure to accurately apply the agreed upon TRM values, or other factors that are generally in control of the utilities and/or their contractors. AG Ex. 1.0C at 38-39. In other words, according to AG witness Mr. Mosenthal, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established

TRM rules and actual program activity and not allow a variance that would provide a “cushion” to ComEd to allow for error. AG IB at 52, 55. Accordingly, realization rates going forward, for planning purposes, should be presumed to be 1.0. AG Ex. 1.0C at 40.

ComEd’s primary claim appears to be that the People’s position would “artificially inflate” ComEd’s proposed modified goals. ComEd IB at 84. The People have already addressed this claim in greater detail and note that ComEd should recalculate its goals to rectify any potential artificial inflation. AG IB at 52. The converse of ComEd’s statement could also be true – that the presence of its current realization rates less than 1.0 present an artificial *deflation* – or, rather, a cushion that ComEd is seeking to include to allow for error. AG IB at 52-53. The Commission should not allow ComEd this added cushion because it is part of an evaluator’s job to determine if the savings were counted properly. AG IB at 53; AG Ex. 1.0 at 39. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things within the utility’s control, such as the errors or inappropriate application of the TRM as discussed above, the utility should be held accountable for these realization rate adjustments.

ComEd also points to the historic realization rates it provided in response to NRDC 2.16, Attachment 1. ComEd IB at 84; *see* NRDC Ex. 1.0 at 27-28. First, it is important to remember the context of these *historical* realization rates – rates taken from a time prior to adoption of the TRM. Now that the TRM exists, all parties and the Commission are in agreement that the TRM will dictate appropriate gross savings claims for all measures included within it. AG Ex. 2.0C at 18. Prior to the TRM, more variance could have been anticipated. This is no longer the case. While it is conceivable that some items may not be covered by the TRM, these items would be within the discretion of ComEd and its contractors to make a reasonable assumption. Clearly,

ComEd has control over assumptions that ComEd has made. These factors outside the TRM would then, by definition, be under the control of the utility and outside of this discussion.

Effectively, by seeking to avoid accountability for factors *within* its control, ComEd is seeking to avoid bearing any of the risk associated with energy savings performance. According to Mr. Mosenthal, this is not only poor public policy but it also appears to contravene the legislature's intent in establishing Section 8-103 of the Act. Indeed, Section 8-103 explicitly established performance targets and assigns penalties to utilities for failing to meet these energy savings performance targets. 220 ILCS 5/8-103. To remove all risk from the utility would render null the inclusion of these penalties and run counter to the plain meaning of the statute. *See Kennedy v. Community Unit School District*, 23 Ill.App.3d 382, 384, 319 N.E.2d 243, 246 (1974) (statutes are to be construed to give full effect to each word, clause, and sentence, so that no word, clause, or sentence is surplusage or void). Finally, it is important to remember that the utilities are using ratepayer money to implement programs for ratepayers. The utilities must remain accountable to ensure that they perform this statutory duty on behalf of ratepayers – not shareholders -- in a prudent way, and in a way that maximizes energy savings while providing net benefits to the ratepayers.

Finally, the majority of the historic realization rates relied upon by ComEd are less than 1.0. To the extent that ComEd's assumed realization rates for planning purposes are similar, Mr. Mosenthal anticipates that the removal of these rates would raise ComEd's proposed goals. However, given the uncertainty that these could even exist, as discussed in greater detail in the People's Initial Brief, it is important that the Commission prohibit ComEd from adjusting goals downward as they have based on planned realization rates that are different (and generally lower) than 1.0. *See* AG Ex. 2.0 at 17. The People also note that it is important that the utilities be held

to an overall goal and are incented to make appropriate annual adjustments to ensure prudent programs. ComEd proposed a highly diverse portfolio that includes numerous programs and hundreds of measures and there is plenty of opportunity for ComEd to make appropriate adjustments and accommodate any annual changes to the TRM.

Essentially, the People urge the Commission to recognize that providing ComEd with its requested “cushion for error” clearly does not work in the best interests of ratepayers. In light of the arguments presented here and in the People’s Initial Brief, the People urge the Commission to enter an order directing ComEd to re-file its Plan, pursuant to Section 8-103(f) to revise its savings goals consistent with this recommendation.

VI. ENERGY EFFICIENCY POLICY MANUAL

The People, in their Initial Brief, urged the Commission to specifically direct ComEd to continue participating with the SAG and to work with the SAG on an Illinois Energy Efficiency Policy Manual. AG IB at 56-57. The purpose of this policy manual, as the People have been very clear about throughout this docket, is to ultimately streamline and encourage consistency on various program-related policies for review and approval by the Commission. AG IB at 56-57; AG Ex. 1.0C at 44-45.

Although it does not directly respond to the People’s testimony on the topic, ComEd objects to the creation of such a manual for the same reasons that Staff originally noted. ComEd IB at 78. Staff, however, appears to have stepped away from its original concerns and has effectively endorsed the creation of an “evaluation-related” manual. Staff IB at 77-78.

As to Staff’s original concerns adopted by ComEd, the People addressed these arguments in their testimony and Initial Brief and will not rehash each of them here. See AG IB at 57; AG Ex. 1.0C at 43-44. The People will simply note that they have been consistently clear that the

primary goal of the proposed policy manual would be to ensure consistency in terms of monitoring savings achieved and evaluating programs. This is particularly true when compared with the current situation where the utility and DCEO Program Administrators and their individually selected evaluators tend to play by different rules. AG IB at 57. Contrary to the views originally expressed by Staff, and seemingly adopted by ComEd, the People are not seeking to further burden the SAG or create additional work that further constrains already limited resources. Rather, as discussed in the testimony of Mr. Mosenthal, the People seek to create the most efficient and consistent process possible. AG Ex. 1.0C at 44.

For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

VII. CONCLUSION

WHEREFORE, the People respectfully request that the Illinois Commerce Commission enter an order consistent with the recommendations made in the AG Initial Brief and this Reply Brief.

Respectfully submitted,

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